

**CITY OF FORT LAUDERDALE**

**REQUEST FOR PROPOSALS**

RFP #722-8574

4<sup>th</sup> of July Fireworks Display

Issued for the Parks and Recreation Department  
By the Administrative Services Department, Purchasing Division

Procurement Specialist II, Richard Ewell, CPPB

Proposals Due (Prior to 2:00 pm): 10/29/01

**REQUEST FOR PROPOSALS  
RFP NO. 722-8574**

TABLE OF CONTENTS

	Page
PART I - INTRODUCTION/INFORMATION	3
PART II - RFP SCHEDULE	4
PART III - SPECIAL CONDITIONS	5
PART IV - TECHNICAL SPECIFICATIONS/SCOPE OF SERVICES	10
PART V - CONSIDERATION FOR AWARD/AWARD PROCEDURES	14
PART VI - REQUIREMENTS OF THE PROPOSAL	15
PROPOSAL PAGES	16-19
GENERAL CONDITIONS	21-25

## **PART I - INTRODUCTION/INFORMATION**

### **01. PURPOSE**

The City of Fort Lauderdale, Florida (City) is seeking proposals from qualified firms, hereinafter referred to as the Contractor, to provide July 4<sup>th</sup> fireworks display on Fort Lauderdale Beach for the City's Parks & Recreation Department, in accordance with the terms, conditions, and specifications contained in this Request for Proposals (RFP).

### **02. INFORMATION OR CLARIFICATION**

For information concerning procedures for responding to this RFP, contact Procurement Specialist Richard Ewell at (954) 828-5138. For information concerning the technical specifications or scope of services, contact Debbie Dunbar, City Festivals at (954) 828-3255. Such contact shall be for clarification purposes only. Material changes, if any, to the scope of services or bidding procedures will only be transmitted by written addendum.

It is preferred that all questions be submitted in writing to the Purchasing Division, 100 North Andrews Avenue, Room 619, Fort Lauderdale, FL, 33301, attn: Richard Ewell. To facilitate prompt receipt of questions, they can be sent via FAX to (954) 828-5650 attn: Richard Ewell. Questions of a material nature must be received prior to the cut-off date specified in the RFP Schedule. Proposers please note: No part of your proposal can be submitted via FAX. The entire proposal must be submitted in accordance with the Instructions To Proposers contained in this RFP.

### **03. ELIGIBILITY**

To be eligible to respond to this RFP, the proposing firm must be regularly engaged in the business of providing fireworks displays for a minimum of 5 years and must demonstrate that they, or the principals assigned to the project, have successfully completed services, similar to those specified in the Scope of Services section of this RFP, to at least one customer similar in size and complexity to the City of Fort Lauderdale.

Contractors meeting or exceeding the above eligibility requirements will be evaluated in accordance with evaluation criteria contained in Part V of this RFP.

## **PART II - RFP SCHEDULE**

Release RFP	09/21/01
Last Date for Receipt of Questions of a Material Nature	10/12/01
Addendum Release (If required)	10/16/01
PROPOSAL DUE (Prior to 2:00 PM)	10/29/01

## **PART III - SPECIAL CONDITIONS**

### **01. GENERAL CONDITIONS**

RFP General Conditions Form G107 Rev. 1/92 (GC) are included and made a part of this RFP on pages 21 - 25.

### **02. VARIANCES**

While the City allows Contractors to take variances to the RFP terms, conditions, and specifications, the number and extent of variances taken will be considered in determining proposal responsiveness and in allocating proposal evaluation points. See Section 1.06 of GC.

### **03. PUBLIC ENTITY CRIMES**

A person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a bid on a contract to provide any goods or services to a public entity, may not submit a bid on a contract with a public entity for the construction or repair of a public building or public work, may not submit bids on leases of real property to a public entity, may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant under a contract with any public entity, and may not transact business with any public entity in excess of the threshold amount provided in Section 287.017, Florida Statutes, for Category Two for a period of 36 months from the date of being placed on the convicted vendor list.

### **04. NEWS RELEASES/PUBLICITY**

News releases, publicity releases, or advertisements relating to this contract or the tasks or projects associated with the project shall not be made without prior City approval.

### **05. RFP DOCUMENTS**

The Contractor shall examine this RFP carefully. Ignorance of the requirements will not relieve the Contractor from liability and obligations under the Contract.

### **06. PROPOSERS' COSTS**

The City shall not be liable for any costs incurred by proposers in responding to this RFP.

### **07. RULES AND PROPOSALS**

The signer of the proposal must declare that the only person(s), company or parties interested in the proposal as principals are named therein; that the proposal is made without collusion with any other person(s), company or parties submitting a proposal; that it is in all respects fair and in good faith, without collusion or fraud; and that the signer of the proposal has full authority to bind the principal proposer.

## 08. CONFIDENTIAL INFORMATION

Florida law provides that municipal records shall at all times be open for personal inspection by any person. Section 119.01, F.S., The Public Records Law. Information and materials received by City in connection with all Proposer's response shall be deemed to be public records subject to public inspection upon award, recommendation for award or 10 days after bid opening, whichever occurs first. However, certain exemptions to the public records law are statutorily provided for in Section 119.07, F.S. Therefore, if the Proposer believes any of the information contained in his or her response is exempt from the Public Records Law, then the Proposer must in his or her response specifically identify the material which is deemed to be exempt and cite the legal authority for the exemption, otherwise, the City will treat all materials received as public records.

## 09. APPROVED EQUAL OR ALTERNATE PRODUCT PROPOSALS

The Technical Specifications contained in this RFP are to be used as a reference only and are not to be considered of a proprietary nature. These specifications represent a level of quality and features which are desired by the City of Fort Lauderdale. The City is receptive to any product which would be considered by qualified City personnel as an approved equal.

The proposer must state clearly in his proposal pages any variance to the specifications. If proposing an approved equal or alternate product, it will be the proposer's responsibility to provide adequate information in his proposal to enable the City to ensure that the proposal meets the required criteria. If adequate information is not submitted with the proposal, it may be rejected.

The City of Fort Lauderdale will be the sole judge in determining if the product proposed qualifies as approved equal. The City reserves the right to award to that proposal which will best serve the interest of the City as determined by the City. The City further reserves the right to waive minor variations to specifications and in the bidding process.

## 10. CONTRACT PERIOD

The period of any resulting contract will be for three years (July 4<sup>th</sup>, 2002 – 2004). The City reserves the right to extend the contract for two (2) additional one (1) year terms providing all terms conditions and specifications remain the same, both parties agree to the extension, and such extension is approved by the City.

## 11. CONTRACT COST ADJUSTMENTS

Prices quoted shall be firm for the initial contract term (three years). Thereafter, any extensions which may be approved by the City shall be subject to the following: Costs for any extension terms shall be subject to an adjustment only if increases or decreases occur in the industry. Such adjustment shall be based on the latest yearly percentage increase in the All Urban Consumers Price Index (CPI-U) as published by the Bureau of Labor Statistics, U.S. Dept. of Labor, and shall not exceed five percent (5%).

The yearly increase or decrease in the CPI shall be that latest Index published and available for the calendar year ending 12/31, prior to the end of the contract year then in effect, as compared to the index for the comparable month one year prior.

Any requested adjustment shall be fully documented and submitted to the City at least one hundred and twenty (120) days prior to the contract anniversary date. Any approved cost adjustments shall become effective on the beginning date of the approved contract extension.

The City may, after examination, refuse to accept the adjusted costs if they are not properly documented, or considered to be excessive, or if decreases are considered to be insufficient. In the event the City does not wish to accept the adjusted costs and the matter cannot be resolved to the satisfaction of the City, the Contract will be considered cancelled on the scheduled expiration date.

## 12. NO EXCLUSIVE CONTRACT/ADDITIONAL SERVICES

Contractor agrees and understands that the contract shall not be construed as an exclusive arrangement and further agrees that the City may, at any time, secure similar or identical services at its sole option.

While this contract is for services provided to the City's Parks & Recreation Department, the City may require similar work for other City departments. Contractor agrees to take on such work unless such work would not be considered reasonable or become an undue burden to the Contractor.

## 13. DELETION OR MODIFICATION OF SERVICES

The City reserves the right to delete any portion of this Contract at any time without cause, and if such right is exercised by the City, the total fee shall be reduced in the same ratio as the estimated cost of the work deleted bears to the estimated cost of the work originally planned. If work has already been accomplished on the portion of the Contract to be deleted, the Contractor shall be paid for the deleted portion on the basis of the estimated percentage of completion of such portion.

If the Contractor and the City agree on modifications or revisions to the task elements, after the City has approved work to begin on a particular task or project, and a budget has been established for that task or project, the Contractor will submit a revised budget to the City for approval prior to proceeding with the work.

## 14. ADDITIONAL ITEMS

The City may require additional items of a similar nature, but not specifically listed in the contract. The Contractor agrees to provide such items, and shall provide the City prices on such additional items based upon a formula or method which is the same or similar to that used in establishing the prices in his proposal. If the price(s) offered are not acceptable to the City, and the situation cannot be resolved to the satisfaction of the City, the City reserves the right to procure those items from other vendors, or to cancel the contract upon giving the Contractor thirty (30) days written notice.

## 15. WARRANTIES OF USAGE

Any estimated quantities listed are for information and tabulation purposes only. No warranty or guarantee of quantities needed is given or implied. It is understood that the Contractor will furnish the City's needs as they arise.

16. SUBSTITUTION OF PERSONNEL

It is the intention of the City that the Contractor's personnel proposed for the contract will be available for the initial contract term. In the event the Contractor wishes to substitute personnel, he shall propose personnel of equal or higher qualifications and all replacement personnel are subject to City approval. In the event substitute personnel are not satisfactory to the City and the matter cannot be resolved to the satisfaction of the City, the City reserves the right to cancel the Contract for cause. See Section 5.09 General Conditions.

17. INDEPENDENT CONTRACTOR

The Contractor is an independent contractor under this Agreement. Personal services provided by the Contractor shall be by employees of the Contractor and subject to supervision by the Contractor, and not as officers, employees, or agents of the City. Personal policies, tax responsibilities, social security, health insurance, employee benefits, purchasing policies and other similar administrative procedures applicable to services rendered under this Contract shall be those of the Contractor.

18. UNCONTROLLABLE CIRCUMSTANCES ("Force Majeure")

The City and Contractor will be excused from the performance of their respective obligations under this agreement when and to the extent that their performance is delayed or prevented by any circumstances beyond their control including, fire, flood, explosion, strikes or other labor disputes, act of God or public emergency, war, riot, civil commotion, malicious damage, act or omission of any governmental authority, delay or failure or shortage of any type of transportation, equipment, or service from a public utility needed for their performance, provided that:

A. the non performing party gives the other party prompt written notice describing the particulars of the Force Majeure including, but not limited to, the nature of the occurrence and its expected duration, and continues to furnish timely reports with respect thereto during the period of the Force Majeure;

B. the excuse of performance is of no greater scope and of no longer duration than is required by the Force Majeure;

C. no obligations of either party that arose before the Force Majeure causing the excuse of performance are excused as a result of the Force Majeure; and

D. the non performing party uses its best efforts to remedy its inability to perform.

Notwithstanding the above, performance shall not be excused under this Section for a period in excess of two (2) months, provided that in extenuating circumstances, the City may excuse performance for a longer term. Economic hardship of the

Contractor will not constitute Force Majeure. The term of the agreement shall be extended by a period equal to that during which either party's performance is suspended under this Section.

19. LOBBYING ACTIVITIES

ALL BIDDERS/PROPOSERS PLEASE NOTE: Any bidder or proposer submitting a response to this solicitation must comply, if applicable, with City of Fort Lauderdale Ordinance No. C-00-27, Lobbying Activities. Copies of Ordinance No. C-00-27 may be obtained from the City Clerk's Office on the 7th Floor of City Hall, 100 N. Andrews Avenue, Fort Lauderdale, Florida. The ordinance may also be viewed on the City's website at <http://ci.ftlaud.fl.us/documents/index.htm>.

20. LAWS, ORDINANCES, ETC.

The Contractor shall observe and comply with all federal, state, local and municipal laws, ordinances, rules and regulations that would apply to this contract.

The Contractor shall observe and comply with all N.F.P.A. Codes 1123 and all updates including barge regulations and South Florida Building Codes.

21. PERMITS, TAXES, LICENSES

The successful Contractor shall, at his own expense, obtain all necessary permits, pay all licenses, fees and taxes required to comply with all local ordinances, state and federal laws, rules and regulations applicable to business to be carried on under this contract. The bidder shall also obtain and pay for all City issued permits as required for the completion of this project.

22. INSURANCE REQUIREMENTS

The Contractor shall carry at all times the following insurance coverage:

Worker's Compensation & Employer's Liability Insurance including Jones Act/Longshore and Harborworkers coverage for water shoots

Limits: Worker's Compensation - Statutory  
Employer's Liability \$100,000

Comprehensive General Liability Insurance

Limits: Combined single Limit Bodily Injury/Property Damage - \$1,000,000

Automobile Liability Insurance

Limits: Bodily Injury - \$250,000 each person  
\$500,000 each occurrence  
Property Damage \$100,000 each occurrence

The barge and tug will carry a minimum of \$5,000,000 insurance policy of protection and indemnity, listing the City of Fort Lauderdale as additional insured. A copy of the insurance rider must be submitted 30 days after acceptance of this proposal.

The City and the event sponsors shall be named as an additional insured. Certificates of insurance must be submitted to the Purchasing Division and be approved by the City's Risk Manager prior to commencement of any work.

## PART IV - TECHNICAL SPECIFICATIONS/SCOPE OF SERVICES

### 01. RFP SUMMARY

This Request for Proposals is to contract the July 4<sup>th</sup> fireworks display and barge services option for the City of Ft. Lauderdale for a three-show term, with possible extensions, commencing July 4<sup>th</sup>, 2002.

### 02. BACKGROUND

For the past 15 years (approximately) the fireworks show has been shot from a barge off the beach. Traditionally the display is 25 minutes in length, with a variety of shells and sizes.

### 03. INTENT

It is the intent of the City to procure the services of a qualified contractor(s) to shoot the fireworks display and supply a barge. The show is to be shot electrically, including expanded requirements for electrical firing systems and equipment.

### 04. PERFORMANCE STANDARDS

Contractor must;

- A. The Contractor shall observe and comply with all of the current N.F.P.A. Code 1123 and the South Florida Building Code as adopted by Broward County, and any changes to the codes enacted during the term of the contract. To include all updated regulations regarding barge displays.
- B. Fire show by electrical firing only, off a barge in the Atlantic Ocean.
- C. All firework shells shall be readily marked for identification, including size and what shells contain multiple projections.
- D. All firework shells used must have been tested and assigned "EX" numbers by the appropriate regulatory agency.

### 05. SCOPE OF WORK

The Contractor shall provide a fireworks display to include the following:

- A. Provide, deliver and secure fireworks to the designated point of fire area.
- B. Provide sufficient number of certified and experienced pyrotechnicians to set-up and fire display.
  - 1. A minimum of two (2) pyrotechnicians plus an applicable number of handlers to help set-up are required. The two (2) pyrotechnicians each must have a minimum experience of ten (10) major electronically fired shows and a minimum of five (5) years certified experience in the handling, transporting and discharge of fireworks.

2. Display shall begin promptly at 9:00 pm local time.
- C. Provide radio communications, including at a minimum radios for shooter, tug boat captain and designated City staff, for the day of the show beginning with the inventory check at 10:00 am, and maintain radio contact throughout the day. In addition, provide the shooter with a working cellular phone, and provide the designated City personnel with the cellular phone number, and a digital beeper.
- D. Provide to the designated City staff on the day before the shoot, prior to inventory check, a printed, detailed, itemized, inventory shipping list of all shells shipped for the fireworks display.
- E. Prior to the loading of the shells onto the barge, provide an on-site inventory check of shells with assigned City staff at 10:00 am. All fireworks packages shall be clearly labeled as to size, type, quantity and country of origin.
- F. Provide to the City at least three (3) weeks prior to the shoot, a copy of all applicable permits (fire, police, local, state and U.S. Coast Guard approval). Provide compliance with all state and local requirements.
- G. Provide to the City a copy of the approved fireworks permit submitted to the Fire Prevention Department three weeks prior to the shoot.
- H. Allow total access of Contractor operations to the Ft. Lauderdale Fire Marshall at all times on the day of the display.
- I. Provide written procedures outlining plans for delivery, set-up and discharge of fireworks display in response to variable weather.
- J. A Coast Guard approved barge, 1 tug with captain, and properly licensed operator to load and shoot off the fireworks display from the Atlantic Ocean. The barge will have the following capabilities:
  1. The barge will be equipped with Coast Guard approved life safety flotation devices for all personnel assigned to the barge.
  2. The barge will be equipped with ladder access to allow immediate access for inspection and emergency response.
  3. Any and all other equipment required to provide an electrically or computer fired fireworks display in accordance with RFP specifications shall be provided by the Contractor.
  4. Four (4) pyrotechnicians will be allowed on the barge during the fireworks shoot. All other fireworks personnel will remain at the dock or on the shore of the beach.

06. THE CITY WILL PROVIDE

- A. Two police boats to be available for patrolling display area to maintain a safety zone around the barge.
- B. A member from the City Festivals staff to coordinate with the Contractor and act as a representative of the City on matters not directly relating to safety or regulations.

- C. A member of the City Festivals staff to count and inventory all shells prior to loading the barge. This employee will verify the actual number of shells delivered vs. the proposed shell count submitted in this RFP.
- D. The Fire Marshall will verify the shell count after the show, insuring all shells were discharged during the show.
- E. Provide a detailed map of the location in the Atlantic Ocean where the fireworks display is to be shot from.

07. BARGE SPECIFICATIONS (in compliance with updated N.F.P.A. regulations)

A flat deck barge, Coast Guard approved for fireworks show. Minimum size to be 110' length X 30' wide. The barge must be free from all debris and garbage, and swept clean.

One tug to accompany the barge to and from the shoot site, and to stand by the barge during the fireworks shoot. The barge will leave the dock site no later than 6:00 pm, July 4<sup>th</sup>, and be in place in the ocean by 7:30 pm for the fireworks shoot.

The barge must carry a load-line and certificate of inspection from the Coast Guard and obtain an application for inspection and final inspection of the barge prior to July 2<sup>nd</sup>. Special circumstances from the Coast Guard now allow the issue of these temporary permits providing the barge meets the following requirements:

- A. The barge owner must provide satisfactory evidence and attest to the seaworthiness of the barge to go offshore prior to any Coast Guard inspection.
- B. When the barge owner makes application to the Coast Guard for inspection, the material condition of the barge must be sufficient for the fireworks display.
- C. The material condition of the barge is suitable for service beyond the boundary line.
- D. There is no water in rakes or voids. To determine this all hatches must be opened for inspection. All hatches must be watertight and will be required to be closed and watertight during the voyage.
- E. Adequate fire fighting equipment is readily available.
- F. A tug will be alongside at all times.

The barge and tugs will carry a minimum \$1,000,000 insurance policy of protection and indemnity, listing the City of Ft. Lauderdale as additional insured. An original insurance rider must be submitted 30 days after acceptance of this proposal.

The barge and/or firework company will need to secure a dock space in Port Le Dania or Port Everglades from July 2<sup>nd</sup> through July 5<sup>th</sup>. The barge will be inspected by the Coast Guard no later than July 2<sup>nd</sup> and ready for the installation of non-explosives and fireworks racks and containers by July 2<sup>nd</sup> at noon.

The barge will carry life preservers for each of the fireworks crew shooting the show. The tug will carry life preservers for its crew.

## 08. REQUIRED EQUIPMENT

Contractor shall provide the following in connection with the barge:

- A. Contractor shall equip the barge with a three sided, enclosed, rigid shelter protecting the pyrotechnicians from the display and from which to electrically fire the shells.
- B. Any personnel on the barge during the firing, including, but not limited to the pyrotechnicians, shall wear protective headgear, eye protection, flame resistant long sleeved shirt and long pants and foot protection.

## 09. DISPLAY PRICE ADJUSTMENTS

- A. In past years the City has encountered various difficulties with contract performance such as:
  - 1. Shells, which are not used because of damage, defective firing or other causes.
  - 2. Start of show significantly delayed by Contractor or a time break in the show (dead air time).

Bidder is to outline in his proposal what cost adjustments would be made to the contracted price of the show to reflect the above circumstances. Please be specific as to how adjustment(s) would be computed. In you wish you can provide examples of adjustments. NOTE: If there is a delay in the show start or a break in the show due to WEATHER conditions, no adjustment will be expected for that delay or break. The City would still require an adjustment for damaged or unshot shells, even if there was a weather delay.

- B. In the event the show is completely weather out (as determined by City personnel) the City reserves the right to reschedule or to completely cancel the display. Bidder is to outline in his proposal what price, if any, Contractor would charge if show is completely cancelled due to weather conditions.

## 10. PRICE OF DISPLAY

Shows submitted should be based on a minimum number of 1500 shells **NOT TO INCLUDE** special effects and flashing strobes or reports. The majority of shells should fall in the range of 4" to 8" high grade shells. The City will not consider proposals in which the Contractor also solicits contributions from sponsors.

## PART V - CONSIDERATION FOR AWARD/AWARD PROCEDURES

The award of the contract will be based on certain objective and subjective considerations listed below:

1. PROGRAM SELECTION: This section will be scored on the following criteria;
  - A. Total number of shells – including specialty colors and size of shells, variety and uniqueness of shells.
  - B. Very limited number of three and four inch shells.
  - C. High quantity of special effects shells, i.e. multiple break shells, amount of shells per minute, lack of dead air time.
  - D. Length of show – SHOW MUST BE AT LEAST 25 MINUTES DURATION.
  - E. Cost adjustments to contract described at Part IV.9.A.
  - F. Cancellation Policy.

(Cakes, Roman Candles and other special effects will be taken into consideration but will not be calculated into the total shell count of the show)

**Maximum points available are 50.**

2. EXPERIENCE AND QUALIFICATIONS: This section will be scored on the following criteria;
  - A. Experience and qualifications of pyrotechnicians, size of crew, and number of shooters onsite.
  - B. Length and quality of company experience.
  - C. Performance of other fireworks display shows, including safety records.
  - D. Prior failure (if any) to perform awarded contract.
  - E. Previous material violations, if any, of federal, state, or local regulations.

**Maximum points available are 20.**

3. ESTIMATED COST TO THE CITY: This section will be scored on the following criteria;
  - G. Price of display.
  - H. Price of barge.

**Maximum points available are 20.**

4. BARGE: This section will be scored on the following criteria;
  - A. Providing a barge with 1 tug for show.
  - B. Barge must meet all requirements listed, including insurance.

**Maximum points available are 10.**

Total points available are 100 points.

Evaluation of proposals will be conducted by an evaluation committee of qualified City Staff, or other persons selected by the City. Proposers or Finalists may be required to provide an oral presentation or sample test by appearing before then Evaluation Committee for clarification purposes only. Information and references submitted will be considered in the award.

## **PART VI - REQUIREMENTS OF THE PROPOSAL**

All proposals must be submitted as specified on the proposal pages which follow. Any attachments must be clearly identified. To be considered, the proposal must respond to all parts of the RFP. Any other information thought to be relevant, but not applicable to the enumerated categories, should be provided as an appendix to the proposal. If publications are supplied by a proposer to respond to a requirement, the response should include reference to the document number and page number. This will provide a quick reference for the evaluators. Proposals not providing this reference will be considered to have no reference material included in the additional documents.

All proposals must be submitted in a sealed package with the RFP number, due and open date, and RFP title clearly marked on the outside. If more than one package is submitted they should be marked 1 of 2, etc.

All proposals must be received in the Purchasing Division, Room 619, 6th floor, City Hall, 100 North Andrews Avenue, Fort Lauderdale, Florida, 33301 prior to 2:00 pm on the date specified in the SCHEDULE Section of this RFP.

The proposal shall be signed by a representative who is authorized to contractually bind the Contractor.

**PROPOSERS MUST SUBMIT AN IDENTIFIED ORIGINAL COPY  
PLUS FIVE (5) COPIES OF THE PROPOSAL PAGES  
INCLUDING ANY ATTACHMENTS**

THE ABOVE REQUIREMENT TOTALS SIX (6) COPIES OF YOUR PROPOSAL

### **PROPOSAL PAGES ARE AS FOLLOWS:**

Proposal Pages - Signature Page

Part I Proposal Pages - Cost Information

Part II Proposal Pages - Technical Information

Part III Questionnaire

Attachments to your Proposal

**PROPOSAL SIGNATURE PAGE**

TO: The City of Fort Lauderdale

The below signed hereby agrees to furnish the following article(s) or services at the price(s) and terms stated subject to all instructions, conditions, specifications addenda, legal advertisement, and conditions contained in the RFP. I have read all attachments including the specifications and fully understand what is required. By submitting this signed proposal I will accept a contract if approved by the City and such acceptance covers all terms, conditions, and specifications of this proposal.

Proposal submitted by:

Name (printed) \_\_\_\_\_ Title:

Company: (Legal Registered)

Address:

City \_\_\_\_\_ State: \_\_\_\_\_ Zip

Telephone No. \_\_\_\_\_ FAX No. \_\_\_\_\_

Signature: \_\_\_\_\_ Date:

Does your firm qualify for MBE or WBE status In accordance with Section 1.08 of General Conditions? \_\_\_\_\_ MBE \_\_\_\_\_ WBE \_\_\_\_\_

ADDENDUM ACKNOWLEDGEMENT - Proposer acknowledges that the following addenda have been received and are included in his proposal:

Addendum No.      Date Issued

VARIANCES: State any variations to specifications, terms and conditions in the space provided below or reference in the space provided below all variances contained on other pages of RFP, attachments or proposal pages. No variations or exceptions by the Proposer will be deemed to be part of the proposal submitted unless such variation or exception is listed and contained within the proposal documents and referenced in the space provided below. If no statement is contained in the below space, it is hereby implied that your proposal complies with the full scope of this RFP.

Variances:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**PROPOSAL PAGES PART I - COST INFORMATION**

1. Proposed price for one 4<sup>th</sup> of July fireworks display done in accordance with RFP specifications:

\$ \_\_\_\_\_/show

2. Price to be charged if display is cancelled due to weather (see section IV.9.B):

\$ \_\_\_\_\_/show

3. Price of barge with 1 tug in accordance with RFP specifications:

\$ \_\_\_\_\_

4. Outline below what cost adjustments would be made to the contracted price of the show to reflect the circumstances described in section IV.9.A. Be specific as to how adjustment(s) would be computed. If you wish you can provide examples of adjustments:

## **PROPOSAL PAGES PART II TECHNICAL PROPOSAL**

The following issues should be fully responded to in your proposal in concise narrative form. Additional sheets should be used, but they should reference each issue and be presented in the same order.

1. A fully detailed plan of the display program: Include, at a minimum, the following information – total number of shells, number of shells per minute, including specialty colors (blue, white, shades of green, etc.) and size of shell, variety of shells and quality of shells. Make special note of shells that would make the show unique to Fort Lauderdale. Note special effect shells and their effects. Show amount of dead air time and length of show.
2. Names of pyrotechnicians that will be assigned to City display and a short resume of each, including number of years experience. If you are presently unable to identify the pyrotechnicians who will be assigned our display you may list those from whom our pyrotechnician will be selected. List how many pyrotechnicians and the names and the size of crew that will set up the show.
3. A detailed, concise action plan for delivery, inventory, communication with staff, set-up, display, clean-up of area and disposal of defective, damaged or unsafe shells. Include safety procedures.
4. References: List at least seven clients for whom you have provided electronically fired displays in the last five (5) years. Provide agency name, address, telephone number, fax number, contact person, and date(s) service was provided. If services provided differs from the one presented in your proposal, please delineate such differences.
5. A detailed explanation of barge services, including delivery, dock space, size of barge, tug and Coast Guard inspections.

## PROPOSAL PAGES PART III QUESTIONNAIRE

Prior Experience:

1. Number of years experience the proposer has had in providing similar services: \_\_\_\_\_years
2. List those persons who will have the lead in administering the contract, proposed on site technicians, and those who will assist the pyrotechnicians during the set-up and show. List name, title or position, and specific duties. (Attach to your proposal).
3. Within the past five years, has your company been involved in any lawsuits concerning personal injury as a result of a fireworks display? \_\_\_\_\_Yes \_\_\_\_\_No If yes, please describe the details and outcome on a separate sheet, including name and contact number of insurance company.
4. Within the past five years, has your company been cited by any State or Federal agencies for violations involving safety procedures? \_\_\_\_\_Yes \_\_\_\_\_No If yes, please describe on a separate sheet the details and outcome, including the agencies name and contact number.
5. Does your company have a training program for your pyrotechnicians? \_\_\_\_\_Yes \_\_\_\_\_No If yes, please describe on a separate sheet.
6. Have you ever refused to complete a contract after it was awarded to your company? \_\_\_\_\_Yes \_\_\_\_\_No If yes, please describe on a separate sheet, including name and address of the entity who made the award.
7. Have you secured barges and tugs for other shows? \_\_\_\_\_Yes \_\_\_\_\_No If so, were the barges for ocean or inland shows? \_\_\_\_\_
8. Will you guarantee the barge, including passing inspection with the Coast Guard? \_\_\_\_\_Yes \_\_\_\_\_No
9. Attach a sheet detailing how long have you been securing barges and what problems have you encountered.
10. Have you ever lost a barge before a show? \_\_\_\_\_Yes \_\_\_\_\_No If so, explain on a separate sheet.

The proposer understands that the information contained in these Proposal Pages is to be relied upon by the City in awarding the proposed Agreement, and such information is warranted by the proposer to be true. The proposer agrees to furnish such additional information, prior to acceptance of any proposal, relating to the qualifications of the proposer, as may be required by the City.

**PROPOSER PLEASE INSURE THAT YOU HAVE SIGNED THE SIGNATURE PAGE OF THESE PROPOSAL PAGES. OMISSION OF A SIGNATURE ON THAT PAGE WILL RESULT IN REJECTION OF YOUR PROPOSAL**

**COMPLETE AND RETURN THE REQUIRED NUMBER OF PROPOSAL PAGES AND ATTACHMENTS.**

PROPOSAL IDENTIFICATION: Please indicate on the face of your sealed proposal package the following:

RFP NO. 722-8574

OPENS 10/29/01

8574 Fireworks

**City of Fort Lauderdale**

**GENERAL CONDITIONS**

These instructions are standard for all contracts for commodities or services issued through the City of Fort Lauderdale Division of Purchasing. The City may delete, supersede, or modify any of these standard instructions for a particular contract by indicating such change in the Invitation to Bid (ITB) Special Conditions, Technical Specifications, Instructions, Proposal Pages, Addenda, and Legal Advertisement.

**PART I BIDDER PROPOSAL PAGE(S) CONDITIONS:**

**1.01 BIDDER ADDRESS:** The City maintains automated vendor mailing lists for each specific Commodity Class Item. Invitation to Bid (ITB'S) will be mailed first to a selection of Bidders who have fully registered on our system. Requests will be mailed to unregistered Bidders within a reasonable time frame for that bid only. Neither the mailing of one ITB to the vendor, nor a bid in return, will register a vendor on our system. If you wish purchase orders sent to a different address, please so indicate. If you wish payments sent to a different address, please so indicate on your invoice.

**1.02 DELIVERY:** Time will be of the essence for any orders placed as a result of this ITB. The City reserves the right to cancel any orders, or part thereof, without obligation if delivery is not made in accordance with the schedule specified by the Bidder and accepted by the City.

**1.03 PAYMENT TERMS AND CASH DISCOUNTS:** Payment terms, unless otherwise stated in this ITB, will be considered to be net 30 days after the date of satisfactory delivery at the place of acceptance and receipt of correct invoice at the office specified, whichever occurs last. Bidder may offer cash discounts for prompt payment but they will not be considered in determination of award. If a Bidder offers a discount, it is understood that the discount time will be computed from the date of satisfactory delivery, at the place of acceptance, and receipt of correct invoice, at the office specified, whichever occurs last.

**1.04 TOTAL BID DISCOUNT:** If Bidder offers a discount for award of all items listed in the bid, such discount shall be deducted from the total of the firm net unit prices bid and shall be considered in tabulation and award of bid.

**1.05 BIDS FIRM FOR ACCEPTANCE:** Bidder warrants, by virtue of bidding, that his bid and the prices quoted in his bid will be firm for acceptance by the City for a period of ninety (90) days from the date of bid opening unless otherwise stated in the ITB.

**1.06 VARIANCES:** For purposes of bid evaluation, Bidder's must indicate any variances, no matter how slight, from ITB General Conditions, Special Conditions, Specifications or Addenda in the space provided in the ITB. No variations or exceptions by a Bidder will be considered or deemed a part of the bid submitted unless such variances or exceptions are listed in the bid and referenced in the space provided on the bidder proposal pages. If variances are not stated, or referenced as required, it will be assumed that the product or service fully complies with the City's terms, conditions, and specifications.

By receiving a bid, City does not necessarily accept any variances contained in the bid. All variances submitted are subject to review and approval by the City. If any bid contains material variances that, in the City's sole opinion, make that bid conditional in nature, the City reserves the right to reject the bid or part of the bid that is declared, by the City as conditional.

**1.07 NO BIDS:** If you do not intend to bid please indicate the reason, such as insufficient time to respond, do not offer product or service, unable to meet specifications, schedule would not permit, or any other reason, in the space provided in this ITB. Failure to bid or return no bid comments prior to the bid due and opening date and time, indicated in this ITB, may result in your firm being deleted from our Bidder's registration list for the Commodity Class Item requested in this ITB.

**1.08 MINORITY AND WOMEN BUSINESS ENTERPRISE PARTICIPATION AND BUSINESS DEFINITIONS:** The City of Fort Lauderdale wants to increase the participation of Minority Business Enterprises (MBE), Women Business Enterprises (WBE), and Small Business Enterprises (SBE) in its purchasing activities. If your firm qualifies in accordance with the below definitions please indicate in the space provided in this ITB.

Minority Business Enterprise (MBE) "A Minority Business" is a business enterprise that is owned or controlled by one or more socially or economically disadvantaged persons. Such disadvantage may arise from cultural, racial, chronic economic circumstances or background or other similar cause. Such persons include, but are not limited to: Blacks, Hispanics, Asian Americans, and Native Americans.

The term 'Minority Business Enterprise' means a business at least 51 percent of which is owned by minority group members or, in the case of a publicly owned business, at least 51 percent of the stock of which is owned by minority group members. For the purpose of the preceding sentence, minority group members are citizens of the United States who include, but are not limited to: Blacks, Hispanics, Asian Americans, and Native Americans.

Women Business Enterprise (WBE) a "Women Owned or Controlled Business is a business enterprise at least 51 percent of which is owned by females or, in the case of a publicly owned business, at least 51 percent of the stock of which is owned by females.

Small Business Enterprise (SBE) "Small Business" means a corporation, partnership, sole proprietorship, or other legal entity formed for the purpose of making a profit, which is independently owned and operated, has either fewer than 100 employees or less than \$1,000,000 in annual gross receipts.

BLACK, which includes persons having origins in any of the Black racial groups of Africa.

WHITE, which includes persons whose origins are Anglo-Saxon and Europeans and persons of Indo-European decent including Pakistani and East Indian.

HISPANIC, which includes persons of Mexican, Puerto Rican, Cuban, Central and South American, or other Spanish culture or origin, regardless of race.

NATIVE AMERICAN, which includes persons whose origins are American Indians, Eskimos, Aleuts, or Native Hawaiians.

ASIAN AMERICAN, which includes persons having origin in any of the original peoples of the Far East, Southeast Asia, the Indian subcontinent, or the Pacific Islands.

**1.09 MINORITY-WOMEN BUSINESS ENTERPRISE PARTICIPATION**

It is the desire of the City of Fort Lauderdale to increase the participation of minority (MBE) and women-owned (WBE) businesses in its contracting and procurement programs. While the City does not have any preference or set aside programs in place, it is committed to a policy of equitable participation for these firms. Proposers are requested to include in their proposals a narrative describing their past accomplishments and intended actions in this area. If proposers are considering minority or women owned enterprise participation in their proposal, those firms, and their specific duties have to be

identified in the proposal. If a proposer is considered for award, he will be asked to meet with City staff so that the intended MBE/WBE participation can be formalized and included in the subsequent contract.

**1.09(a) CERTIFICATION BY BROWARD COUNTY, FL:** If awarded a contract or purchase order as a result of this solicitation, and if the awarded contractor/vendor is claiming minority status in accordance with Section 1.08 of the General Conditions, then said awarded contractor/vendor shall apply for certification by Broward County, Florida, Division of Equal Employment and Small Business Opportunity. Contractor/vendor shall provide documentation of application status, and once approved or disapproved by Broward County, must also provide that documentation to the Purchasing Division of the City of Fort Lauderdale.

## **Part II DEFINITIONS/ORDER OF PRECEDENCE**

**2.01 BIDDING DEFINITIONS** The City will use the following definitions in its general conditions, special conditions, technical specifications, instructions to bidders, addenda and any other document used in the bidding process:

INVITATION TO BID (ITB) when the City is requesting bids from qualified Bidders.

REQUEST FOR PROPOSALS (RFP) when the City is requesting proposals from qualified Proposers.

BID – a price and terms quote received in response to an ITB.

PROPOSAL – a proposal received in response to an RFP.

BIDDER – Person or firm submitting a Bid.

PROPOSER – Person or firm submitting a Proposal.

RESPONSIVE BIDDER – A person whose bid conforms in all material respects to the terms and conditions included in the ITB.

RESPONSIBLE BIDDER – A person who has the capability in all respects to perform in full the contract requirements, as stated in the ITB, and the integrity and reliability that will assure good faith performance.

FIRST RANKED PROPOSER – That Proposer, responding to a City RFP, whose Proposal is deemed by the City, the most advantageous to the City after applying the evaluation criteria contained in the RFP.

SELLER – Successful Bidder or Proposer who is awarded a Purchase Order or Contract to provide goods or services to the City.

CONTRACTOR – Successful Bidder or Proposer who is awarded a Purchase Order, award Contract, Blanket Purchase Order agreement, or Term Contract to provide goods or services to the City.

CONTRACT – A deliberate verbal or written agreement between two or more competent parties to perform or not to perform a certain act or acts, including all types of agreements, regardless of what they may be called, for the procurement or disposal of equipment, materials, supplies, services or construction.

CONSULTANT – Successful Bidder or Proposer who is awarded a contract to provide professional services to the City.

The following terms may be used interchangeably by the City: ITB, or RFP; Bid or Proposal; Bidder, Proposer, or Seller; Contractor or Consultant; Contract, Award, Agreement or Purchase Order.

**2.02 SPECIAL CONDITIONS:** Any and all Special Conditions contained in this ITB that may be in variance or conflict with these General Conditions shall have precedence over these General Conditions. If no changes or deletions to General Conditions are made in the Special Conditions, then the General Conditions shall prevail in their entirety,

## **PART III BIDDING AND AWARD PROCEDURES:**

**3.01 SUBMISSION AND RECEIPT OF BIDS:** To receive consideration, bids must be received prior to the bid opening date and time. Unless otherwise specified, Bidder's should use the proposal forms provided by the City. These forms may be duplicated, but failure to use the forms may cause the bid to be rejected. Any erasures or corrections on the bid must be made in ink and initialed by Bidder in ink. All information submitted by the Bidder shall be printed, typewritten or filled in with pen and ink. Bids shall be signed in ink. Separate bids must be submitted for each ITB issued by the City in separate sealed envelopes properly marked. When a particular ITB or RFP requires multiple copies of bids or proposals they may be included in a single envelope or package properly sealed and identified. Only send bids via facsimile transmission (FAX) if the ITB specifically states that bids sent via FAX will be considered. If such a statement is not included in the ITB, bids sent via FAX will be rejected. Bids will be publicly opened in the Purchasing Office, or other designated area, in the presence of Bidder's, the public, and City staff. Bidders and the public are invited and encouraged to attend bid openings. Bids will be tabulated and made available for review by Bidder's and the public in accordance with applicable regulations.

**3.02 MODEL NUMBER CORRECTIONS:** If the model number for the make specified in this ITB is incorrect, or no longer available and replaced with an updated model with new specifications, the Bidder shall enter the correct model number on the bidder proposal page. In the case of an updated model with new specifications, Bidder shall provide adequate information to allow the City to determine if the model bid meets the City's requirements.

**3.03 PRICES QUOTED:** Deduct trade discounts, and quote firm net prices. Give both unit price and extended total. In the case of a discrepancy in computing the amount of the bid, the unit price quoted will govern. All prices quoted shall be F.O.B. destination, freight prepaid (Bidder pays and bears freight charges, Bidder owns goods in transit and files any claims), unless otherwise stated in Special Conditions. Each item must be bid separately. No attempt shall be made to tie any item or items contained in the ITB with any other business with the City.

**3.04 TAXES:** The City of Fort Lauderdale is exempt from Federal Excise and Florida Sales taxes on direct purchase of tangible property. Exemption number for Federal Excise taxes is 59-74-0111K, and State Sales tax exemption number is 16-03-196479-54C.

**3.05 WARRANTIES OF USAGE:** Any quantities listed in this ITB as estimated or projected are provided for tabulation and information purposes only. No warranty or guarantee of quantities is given or implied. It is understood that the Contractor will furnish the City's needs as they arise.

**3.06 APPROVED EQUAL:** When the technical specifications call for a brand name, manufacturer, make, model, or vendor catalog number with acceptance of APPROVED EQUAL, it shall be for the purpose of establishing a level of quality and features desired and acceptable to the City. In such cases, the City will be receptive to any unit that would be considered by qualified City personnel as an approved equal. In that the specified make and model represent a level of quality and features desired by the City, the Bidder must state clearly in his bid any variance from those specifications. It is the Bidder's responsibility to provide adequate information, in his bid, to enable the City to ensure that the bid meets the required criteria. If adequate information is not submitted with the bid, it may be rejected. The City will be the sole judge in determining if the item bid qualifies as an approved equal.

**3.07 MINIMUM AND MANDATORY TECHNICAL SPECIFICATIONS:** The technical specifications may include items that are considered minimum, mandatory, or required. If any Bidder is unable to meet, or exceed these items, and feels that the technical specifications are overly restrictive, he must notify the Purchasing Division immediately. Such notification must be received by the Purchasing Division prior to the deadline

contained in the ITB, for questions of a material nature, or prior to five (5) days before bid due and open date, whichever occurs first. If no such notification is received prior to that deadline, the City will consider the technical specifications to be acceptable to all bidders.

**3.08 MISTAKES:** Bidders are cautioned to examine all terms, conditions, specifications, drawings, exhibits, addenda, delivery instructions and special conditions pertaining to the ITB. Failure of the Bidder to examine all pertinent documents shall not entitle him to any relief from the conditions imposed in the contract.

**3.09 SAMPLES AND DEMONSTRATIONS:** Samples or inspection of product may be requested to determine suitability. Unless otherwise specified in Special Conditions, samples shall be requested after the date of bid opening, and if requested should be received by the City within seven (7) working days of request. Samples, when requested, must be furnished free of expense to the City and if not used in testing or destroyed, will upon request of the Bidder, be returned within thirty (30) days of bid award at Bidder's expense. When required, the City may request full demonstrations of units prior to award. When such demonstrations are requested, the Bidder shall respond promptly and arrange a demonstration at a convenient location. Failure to provide samples or demonstrations as specified by the City may result in rejection of a bid.

**3.10 LIFE CYCLE COSTING:** If so specified in the ITB, the City may elect to evaluate equipment proposed on the basis of total cost of ownership. In using Life Cycle Costing, factors such as the following may be considered: estimated useful life, maintenance costs, cost of supplies, labor intensity, energy usage, environmental impact, and residual value. The City reserves the right to use those or other applicable criteria, in its sole opinion, that will most accurately estimate total cost of use and ownership.

**3.11 BIDDING ITEMS WITH RECYCLED CONTENT:** In addressing environmental concerns, the City of Fort Lauderdale encourages Bidders to submit bids or alternate bids containing items with recycled content. When submitting bids containing items with recycled content, Bidder shall provide documentation adequate for the City to verify the recycled content. The City prefers packaging consisting of materials that are degradable or able to be recycled. When specifically stated in the ITB, the City may give preference to bids containing items manufactured with recycled material or packaging that is able to be recycled.

**3.12 USE OF OTHER GOVERNMENTAL CONTRACTS:** The City reserves the right to reject any part or all of any bids received and utilize other available governmental contracts, if such action is in its best interest.

**3.13 QUALIFICATIONS/INSPECTION:** Bids will only be considered from firms normally engaged in providing the types of commodities/services specified herein. The City reserves the right to inspect the Bidder's facilities, equipment, personnel, and organization at any time, or to take any other action necessary to determine Bidder's ability to perform. The Purchasing Manager reserves the right to reject bids where evidence or evaluation is determined to indicate inability to perform.

**3.14 BID SURETY:** If Special Conditions require a bid security, it shall be submitted in the amount stated. A bid security can be in the form of a bid bond, postal money order, cashier's check, or irrevocable letter of credit. Bid security will be returned to the unsuccessful bidders as soon as practicable after opening of bids. Bid security will be returned to the successful bidder after acceptance of the performance bond or irrevocable letter of credit, if required; acceptance of insurance coverage, if required; and full execution of contract documents, if required; and full execution of contract documents, if required; or conditions as stated in Special Conditions.

**3.15 PUBLIC RECORDS:** Florida law provides that municipal records shall at all times be open for personal inspection by any person. Section 119.01, F.S., The Public Records Law. Information and materials received by City in connection with an ITB response shall be deemed to be public records subject to public inspection upon award, recommendation for award, or 10 days after bid opening, whichever occurs first. However, certain exemptions to the public records law are statutorily provided for in Section 119.07, F.S. If the Proposer believes any of the information contained in his or her response is exempt from the Public Records Law, then the Proposer, must in his or her response, specifically identify the material which is deemed to be exempt and cite the legal authority for the exemption, otherwise, the City will treat all materials received as public records.

**3.16 PROHIBITION OF INTEREST:** No contract will be awarded to a bidding firm who has City elected officials, officers or employees affiliated with it, unless the bidding firm has fully complied with current Florida State Statutes and City Ordinances relating to this issue. Bidders must disclose any such affiliation. Failure to disclose any such affiliation will result in disqualification of the Bidder and removal of the Bidder from the City's bidder lists and prohibition from engaging in any business with the City.

**3.17 RESERVATIONS FOR AWARD AND REJECTION OF BIDS:** The City reserves the right to accept or reject any or all bids, part of bids, and to waive minor irregularities or variations to specifications contained in bids, and minor irregularities in the bidding process. The City also reserves the right to award the contract on a split order basis, lump sum basis, individual item basis, or such combination as shall best serve the interest of the City. The City reserves the right to make an award to the responsive and responsible bidder whose product or service meets the terms, conditions, and specifications of the ITB and whose bid is considered to best serve the City's interest. In determining the responsiveness of the offer and the responsibility of the Bidder, the following shall be considered when applicable: the ability, capacity and skill of the Bidder to perform as required; whether the Bidder can perform promptly, or within the time specified, without delay or interference; the character, integrity, reputation, judgment, experience and efficiency of the Bidder; the quality of past performance by the Bidder; the previous and existing compliance by the Bidder with related laws and ordinances; the sufficiency of the Bidder's financial resources; the availability, quality and adaptability of the Bidder's supplies or services to the required use; the ability of the Bidder to provide future maintenance, service or parts; the number and scope of conditions attached to the bid.

If the ITB provides for a contract trial period, the City reserves the right, in the event the selected bidder does not perform satisfactorily, to award a trial period to the next ranked bidder or to award a contract to the next ranked bidder, if that bidder has successfully provided services to the City in the past. This procedure to continue until a bidder is selected or the contract is re-bid, at the sole option of the City.

**3.18 LEGAL REQUIREMENTS:** Applicable provisions of all federal, state, county laws, and local ordinances, rules and regulations, shall govern development, submittal and evaluation of all bids received in response hereto and shall govern any and all claims and disputes which may arise between person(s) submitting a bid response hereto and the City by and through its officers, employees and authorized representatives, or any other person, natural or otherwise; and lack of knowledge by any bidder shall not constitute a cognizable defense against the legal effect thereof.

#### **PART IV BONDS AND INSURANCE**

**4.01 PERFORMANCE BOND/IRREVOCABLE LETTER OF CREDIT:** If a performance bond or irrevocable letter of credit is required in Special Conditions, the Contractor shall within fifteen (15) working days after notification of award, furnish to the City a Performance Bond or an Unconditional Irrevocable Letter of Credit payable to the City of Fort Lauderdale, Florida, in the face amount specified in Special Conditions as surety for faithful performance under the terms and conditions of the contract. If the bond is on an annual coverage basis, renewal for each succeeding year shall be submitted to the City thirty (30) days prior to the termination date of the existing Performance Bond. The Performance Bond must be executed by a

surety company of recognized standing, authorized to do business in the State of Florida and having a resident agent. If a Letter of Credit is chosen, it must be in a form acceptable to the City, drawn on a local (Broward, Dade or Palm Beach Counties) bank acceptable to the City and issued in favor of the City of Fort Lauderdale, Florida. If a Bidder wishes to use a non-local bank, he must have prior City approval of the requirements to draw against the Letter of Credit.

Acknowledgement and agreement is given by both parties that the amount herein set for the Performance Bond or Irrevocable Letter of Credit is not intended to be nor shall be deemed to be in the nature of liquidated damages nor is it intended to limit the liability of the Contractor to the City in the event of a material breach of this Agreement by the Contractor.

**4.02 INSURANCE:** If the Contractor is required to go on to City property to perform work or services as a result of ITB award, the Contractor shall assume full responsibility and expense to obtain all necessary insurance as required by City or specified in Special Conditions.

The Contractor shall provide to the Purchasing Division original certificates of coverage and receive notification of approval of those certificates by the City's Risk Manager prior to engaging in any activities under this contract. The Contractor's insurance is subject to the approval of the City's Risk Manager. The certificates must list the City as an ADDITIONAL INSURED and shall have no less than thirty (30) days written notice of cancellation or material change. Further modification of the insurance requirements may be made at the sole discretion of the City's Risk Manager if circumstances change or adequate protection of the City is not presented. Bidder, by submitting his bid, agrees to abide by such modifications.

#### **PART V PURCHASE ORDER AND CONTRACT TERMS:**

**5.01 COMPLIANCE TO SPECIFICATIONS, LATE DELIVERIES/PENALTIES:** Items offered may be tested for compliance to bid specifications. Items delivered which do not conform to bid specifications may be rejected and returned at Contractor's expense. Any violation resulting in contract termination for cause or delivery of items not conforming to specifications, or late delivery may also result in:

- Bidder's name being removed from the City's bidder's mailing list for a specified period and Bidder will not be recommended for any award during that period.
- All City Departments being advised to refrain from doing business with the Bidder.
- All other remedies in law or equity.

**5.02 ACCEPTANCE, CONDITION, AND PACKAGING:** The material delivered in response to ITB award shall remain the property of the Seller until a physical inspection is made and the material accepted to the satisfaction of the City. The material must comply fully with the terms of the ITB, be of the required quality, new, and the latest model. All containers shall be suitable for storage and shipment by common carrier, and all prices shall include standard commercial packaging. The City will not accept substitutes of any kind. Any substitutes or material not meeting specifications will be returned at the Bidder's expense. Payment will be made only after City receipt and acceptance of materials or services.

**5.03 SAFETY STANDARDS:** All manufactured items and fabricated assemblies shall comply with applicable requirements of the Occupational Safety and Health Act of 1970 as amended, and be in compliance with Chapter 442, Florida Statutes. Any toxic substance listed in Section 38F-41.03 of the Florida Administrative Code delivered as a result of this order must be accompanied by a completed Material Safety Data Sheet (MSDS).

**5.04 ASBESTOS STATEMENT:** All material supplied must be 100% asbestos free. Bidder, by virtue of bidding, certifies that if awarded any portion of the ITB he will supply only material or equipment that is 100% asbestos free.

**5.05 OTHER GOVERNMENTAL ENTITIES:** If the Bidder is awarded a contract as a result of this ITB, he will, if he has sufficient capacity or quantities available, provide to other governmental agencies, so requesting, the products or services awarded in accordance with the terms and conditions of the ITB and resulting contract. Prices shall be F.O.B. delivered to the requesting agency.

**5.06 VERBAL INSTRUCTIONS PROCEDURE:** No negotiations, decisions, or actions shall be initiated or executed by the Contractor as a result of any discussions with any City employee. Only those communications which are in writing from an authorized City representative may be considered. Only written communications from Contractors, which are assigned by a person designated as authorized to bind the Contractor, will be recognized by the City as duly authorized expressions on behalf of Contractors.

**5.07 INDEPENDENT CONTRACTOR:** The Contractor is an independent contractor under this Agreement. Personal services provided by the Proposer shall be by employees of the Contractor and subject to supervision by the Contractor, and not as officers, employees, or agents of the City. Personnel policies, tax responsibilities, social security, health insurance, employee benefits, purchasing policies unless otherwise stated in this ITB, and other similar administrative procedures applicable to services rendered under this contract shall be those of the Contractor.

**5.08 INDEMNITY/HOLD HARMLESS AGREEMENT:** The Contractor agrees to protect, defend, indemnify, and hold harmless the City of Fort Lauderdale and its officers, employees and agents from and against any and all losses, penalties, damages, settlements, claims, costs, charges for other expenses, or liabilities of every and any kind including attorney fees, in connection with or arising directly or indirectly out of the work agreed to or performed by Contractor under the terms of any agreement that may arise due to the bidding process. Without limiting the foregoing, any and all such claims, suits, or other actions relating to personal injury, death, damage to property, defects in materials or workmanship, actual or alleged violations of any applicable Statute, ordinance, administrative order, rule or regulation, or decree of any court shall be included in the indemnity hereunder.

**5.09 TERMINATION FOR CAUSE:** If, through any cause, the Contractor shall fail to fulfill in a timely and proper manner its obligations under this Agreement, or if the Contractor shall violate any of the provisions of this Agreement, the City may upon written notice to the Contractor terminate the right of the Contractor to proceed under this Agreement, or with such part or parts of the Agreement as to which there has been default, and may hold the Contractor liable for any damages caused to the City by reason of such default and termination. In the event of such termination, any completed services performed by the Contractor under this Agreement shall, at the option of the City, become the City's property and the Contractor shall be entitled to receive equitable compensation for any work completed to the satisfaction of the City. The Contractor, however, shall not be relieved of liability to the City for damages sustained by the City by reason of any breach of the Agreement by the Contractor, and the City may withhold any payments to the Contractor for the purpose of setoff until such time as the amount of damages due to the City from the Contractor can be determined.

**5.10 TERMINATION FOR CONVENIENCE:** The City reserves the right, in its best interest as determined by the City, to cancel contract by giving written notice to the Contractor thirty (30) days prior to the effective date of such cancellation.

**5.11 CANCELLATION FOR UNAPPROPRIATED FUNDS:** The obligation of the City for payment to a Contractor is limited to the availability of funds appropriated in a current fiscal period, and continuation of the contract into a subsequent fiscal period is subject to appropriation of funds, unless otherwise authorized by law.

**5.12 RECORDS/AUDIT:** The Contractor shall maintain during the term of the contract all books of account, reports and records in accordance with generally accepted accounting practices and standards for records directly related to this contract. The form of all records and reports shall be subject to the approval of the City's Internal Auditor. The Contractor agrees to make available to the City's Internal Auditor, during normal business hours and in Broward, Dade or Palm Beach Counties, all books of account, reports and records relating to this contract for the duration of the contract and retain them for a minimum period of one (1) year beyond the last day of the contract term.

**5.13 PERMITS, TAXES, LICENSES:** The successful Contractor shall, at his own expense, obtain all necessary permits, pay all licenses, fees and taxes, required to comply with all local ordinances, state and federal laws, rules and regulations applicable to business to be carried on under this contract.

**5.14 LAWS/ORDINANCES:** The Contractor shall observe and comply with all Federal, state, local and municipal laws, ordinances rules and regulations that would apply to this contract.

**5.15 NON-DISCRIMINATION:** There shall be no discrimination as to race, sex, color, creed, age or national origin in the operations conducted under this contract.

**5.16 UNUSUAL CIRCUMSTANCES:** If during a contract term where costs to the City are to remain firm or adjustments are restricted by a percentage or CPI cap, unusual circumstances that could not have been foreseen by either party to the contract occur, and those circumstances significantly affect the Contractor's cost in providing the required items or services, then the Contractor may request adjustments to the costs to the City to reflect the changed circumstances. The circumstances must be beyond the control of the Contractor, and the requested adjustments must be fully documented. The City may, after examination, refuse to accept the adjusted costs if they are not properly documented, increases are considered to be excessive, or decreases are considered to be insufficient. In the event the City does not wish to accept the adjusted costs and the matter cannot be resolved to the satisfaction of the City, the City will reserve the following options:

1. The contract can be canceled by the City upon giving thirty (30) days written notice to the Contractor with no penalty to the City or Contractor. The Contractor shall fill all City requirements submitted to the Contractor until the termination date contained in the notice.

2. The City requires the Contractor to continue to provide the items and services at the firm fixed (non-adjusted) cost until the termination of the contract term then in effect.

3. If the City, in its interest and in its sole opinion, determines that the Contractor in a capricious manner attempted to use this section of the contract to relieve themselves of a legitimate obligation under the contract, and no unusual circumstances had occurred, the City reserves the right to take any and all action under law or equity. Such action shall include, but not be limited to, declaring the Contractor in default and disqualifying him for receiving any business from the City for a state period of time.

If the City does agree to adjusted costs, these adjusted costs shall not be invoiced to the City until the Contractor receives notice in writing signed by a person authorized to bind the City in such matters.

**5.17 ELIGIBILITY:** If applicable, the Contractor must first register with the Department of State of the State of Florida, in accordance with Florida State Statutes, prior to entering into a contract with the City.

**5.18 PATENTS AND ROYALTIES:** The Contractor, without exception, shall indemnify and save harmless the City and its employees from liability of any nature and kind, including cost and expenses for or on account of any copyrighted, patented or un-patented invention, process, or article manufactured or used in the performance of the contract, including its use by the City. If the Contractor uses any design, device, or materials covered by letters, patent or copyright, it is mutually agreed and understood without exception that the bid prices shall include all royalties or costs arising from the use of such design, device, or materials in any way involved in the work.

**5.19 ASSIGNMENT:** Contractor shall not transfer or assign the performance required by this ITB without the prior written consent of the City. Any award issued pursuant to this ITB, and the monies, which may become due hereunder, are not assignable except with the prior written approval of the City Manager or selected designee.

**5.20 LITIGATION VENUE:** The parties waive the privilege of venue and agree that all litigation between them in the state courts shall take place in Broward County, Florida and that all litigation between them in the federal courts shall take place in the Southern District in and for the State of Florida. Form G-107 Rev. 07/01